

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 01-2535

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Gary Barfield,

Appellant,

v.

Morse U. Gist, Jr.,

Appellee.

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Appeal from the United States  
District Court for the  
Western District of Arkansas.

[UNPUBLISHED]

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Submitted: November 7, 2001  
Filed: November 15, 2001

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Before HANSEN, FAGG, and BEAM, Circuit Judges.

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PER CURIAM.

Gary Barfield, an Arkansas inmate, appeals the district court's<sup>1</sup> dismissal of his 42 U.S.C. § 1983 action for failure to state a claim. Barfield was tried for first-degree murder as an habitual offender; in the instant action, he alleged that his appointed trial counsel conspired with the state court judge, and with unidentified state officials, to secure his conviction on a lesser included offense. On appeal, he reiterates his

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<sup>1</sup>The Honorable Jimm Larry Hendren, Chief Judge, United States District Court for the Western District of Arkansas, adopting the report and recommendations of the Honorable Bobby E. Shepherd, United States Magistrate Judge for the Western District of Arkansas.

arguments below, and further argues that the district court should have construed his complaint as an application for a writ of habeas corpus. Following de novo review, we conclude that the district court did not err in dismissing Barfield's claims. The court also did not err in refusing to construe Barfield's complaint as a habeas petition under 28 U.S.C. § 2254, as Barfield already had filed an unsuccessful § 2254 petition, see Gary Barfield v. Larry Norris, No. 01-1287 (8th Cir. Mar. 5, 2001), and did not obtain permission from this court to file a second petition, see 28 U.S.C. § 2244(b)(3)(A).

Accordingly, we affirm the judgment of the district court. See 8th Cir. R. 47B. We also deny Barfield's pending motion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.